

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CASEY KENNETH JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

January 31, 2008

No. 273237

Wayne Circuit Court

LC No. 06-005971-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his sentence of 34 months to 15 years in prison imposed on his jury conviction of possession of heroin, MCL 333.7403(2)(a)(v). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with possession with intent to deliver heroin, MCL 333.7401(2)(a)(iv). The prosecution presented evidence that defendant stood outside a market, spoke to persons who approached the market, and, on two occasions, accepted money from an individual and handed over an item from the right front pocket of his pants in return. Defendant was arrested, and was found to have five packets containing heroin in his right front pocket, and \$48 in cash on his person. Police officers who conducted the operation testified that defendant's activities were consistent with those of a person selling narcotics, and that the heroin was packaged in a manner that indicated that it was for sale. Defendant acknowledged that he went to the market on the day in question, but denied that he sold narcotics or that he had narcotics on his person.

The jury acquitted defendant of the principal charge of possession with intent to deliver heroin, but convicted him of the lesser included charge of possession of heroin.

The statutory sentencing guidelines, adjusted for defendant's status as a fourth habitual offender, MCL 769.12, recommended a minimum term range of zero to 34 months. At sentencing, the prosecutor stated that defendant's prior record indicated that defendant was a "career drug dealer." Defense counsel responded that defendant "probably" was a drug dealer, but that he engaged in that activity because he was an addict. The trial court stated that the fact that defendant might be an addict did not "excuse the activity of selling or dealing with drugs." The trial court sentenced defendant to 34 months to 15 years in prison, with credit for 27 days.

Under the sentencing guidelines act, if a minimum sentence is within the appropriate sentencing guidelines range, we must affirm the sentence and may not remand for resentencing absent an error in the scoring of the guidelines or inaccurate information relied on by the trial court in determining the sentence. MCL 769.34(10); *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). A party may not raise on appeal an issue challenging the scoring of the guidelines or the accuracy of information relied upon in determining a sentence that is within the appropriate guidelines range unless the party has raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand. MCL 769.34(10); MCR 6.429(C).

Defendant emphasizes that a defendant is entitled to be sentenced based on accurate information, *People v Lee*, 391 Mich 618, 636-637; 218 NW2d 655 (1974), and contends that he is entitled to be resentenced because the trial court improperly based its sentence on an unsupported finding that he was guilty of selling narcotics. We disagree.

The trial court imposed a minimum term within the guidelines. Defendant did not object to the trial court's remarks regarding his probable selling of narcotics at sentencing, did not move for resentencing in the trial court, and did not file a motion to remand in this Court. Thus, defendant's issue is not subject to review by this Court. MCL 769.34(10); *Kimble, supra* at 309; MCR 6.429(C).

We affirm.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto